

May 19, 2010

BY ECFS

Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Attention: Kathy Harris, Esq.
Deputy Chief
Mobility Division
Wireless Telecommunications Bureau

Re: *Applications of AT&T Inc. and Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104

REDACTED FOR INSPECTION IN WT Docket No. 09-104 before the Federal Communications Commission

Dear Ms. Harris:

Pursuant to your request, I am enclosing forms of various documents (collectively, the “Documents”) that will be executed at the closing of AT&T’s acquisition (the “AT&T Acquisition”) of the Verizon Wireless properties that are the subject of WT Docket No. 09-104 (the “AT&T Acquisition Assets”) or during the period following closing when certain of those properties will be held by an exchange accommodation titleholder (“EAT”).

The Reverse Like-Kind Exchange

As AT&T has described previously,¹ it intends to effect a reverse like-kind exchange of certain of the AT&T Acquisition assets for the assets that AT&T is divesting from its purchase

¹ See *In re Applications of AT&T Inc. & Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, WT Dkt No. 09-104, Description of Transaction, Public Interest Showing & Related Demonstrations at 8 n.6 (filed May 22, 2009; amended June 5, 2009) (“Public Interest Statement”); Partial Response of AT&T Inc. to General Information Request Dated November 19, 2009, WT Dkt No. 09-104, at 29-32 (filed Dec. 3, 2009) (“Dec. 3 Partial Response”).

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of Centennial Communications Corp.² (the “AT&T Divestiture”). The reverse like-kind exchange will occur as follows:

1. Verizon Wireless subsidiaries will contribute the assets being sold to AT&T to Abraham Divestiture Company LLC (“ADC”), a wholly owned, indirect subsidiary of Verizon Wireless.³
2. At the closing of the AT&T Acquisition, Verizon Wireless will transfer ownership of ADC to Garden Acquisitions Inc. (“GAI”), the EAT, which will hold ADC for up to 180 days.⁴
3. Not all of the AT&T Acquisition Assets will be required to offset the value of the AT&T Divestiture Assets. Accordingly, at or after the closing of the AT&T Acquisition, ADC will transfer control of the excess AT&T Acquisition Assets to AT&T Mobility II LLC (“Mobility II”), a wholly owned, indirect subsidiary of AT&T.⁵
4. To enable AT&T to manage and to enjoy all the benefits and burdens associated with those AT&T Acquisition Assets that ADC will retain after the closing of the AT&T Acquisition, ADC will enter into a spectrum lease and other agreements with Mobility II.⁶ Those agreements will take effect at the closing of the AT&T Acquisition.

² See *Cellco P'ship d/b/a Verizon Wireless & AT&T Inc. Seek FCC Consent to Assign or Transfer Control of Licenses & Authorizations & Request a Declaratory Ruling on Foreign Ownership – Amended Application*, WT Dkt No. 09-121, Public Notice, DA 10-531 (WTB/IB rel. Mar. 26, 2010); *Texas 10, LLC & AT&T Inc. Seek FCC Consent to Assign Licenses & Authorizations*, WT Dkt No. 10-78, Public Notice, DA 10-530 (WTB/IB rel. Mar. 26, 2010). This exchange is for tax purposes only. Each the three transactions will proceed independently; none of the closings is conditioned on the regulatory approval or closing of one or both of the others. See Dec. 3 Partial Response at 31.

³ Dec. 3 Partial Response at 31.

⁴ *Id.*

⁵ See *id.* at 29-30, 31 n.29.

⁶ *Id.* at 32.

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5. After 180 days or upon completion of the reverse like-kind exchange, whichever occurs first, GAI will transfer its 100 percent interest in ADC to a wholly owned, indirect AT&T subsidiary,⁷ and the spectrum lease will terminate.⁸

Thus, after the closing of the AT&T Acquisition, GAI will have *de jure* control of ADC and ADC's licenses and other assets while AT&T (through Mobility II) will have *de facto* control of these assets.⁹ The transfer of GAI's 100 percent interest in ADC to an AT&T subsidiary will reunite *de jure* and *de facto* control of these assets with AT&T. This reunification will be a *pro forma* transfer of control,¹⁰ for which AT&T will file the requisite notifications.

Along with the Short-Term *De Facto* Transfer Spectrum Lease Agreement (the form of which AT&T filed previously), the Documents will govern steps 3-5 above and, more generally, the relationship among AT&T, ADC, and GAI. Two of the Documents, (1) the Peach Acquisitions LLC Contribution Agreement and (2) the Contribution and Assignment and Assumption Agreement and Bill of Sale, are particularly relevant to step 3. These Documents, which will be executed at closing, provide for GAI to contribute the sole membership interest in a shell limited liability company, Peach Acquisitions LLC ("Peach"), to ADC and for ADC to contribute to Peach the excess AT&T Acquisition Assets that will not be needed for the reverse like-kind exchange. Pursuant to a third Document, the Call and Put Option Agreement, Mobility II will have a call option to acquire the sole membership interest in Peach from ADC. Mobility II intends to exercise that option at closing. Thus, by the end of the closing, Peach will be a wholly owned, indirect subsidiary of AT&T Inc. (through Mobility II) and will hold those AT&T Acquisition Assets that will not be held by ADC for use in the reverse like-kind exchange.

⁷ *Id.*

⁸ Short-Term *De Facto* Transfer Lease Agreement among Garden Acquisitions Inc., Abraham Divestiture Company LLC, AT&T Mobility II LLC, and AT&T Mobility LLC Dated as of _____, 2010 § 3.2(a).

⁹ Public Interest Statement at 8 n.6; Dec. 3 Partial Response at 32. Through attachments to the notifications of consummation and the filing of *pro forma* assignment or transfer of control notifications in accordance with the Commission's rules and as directed by the staff, *see* Dec. 3 Partial Response at 30, AT&T will ensure that the Commission has accurate records regarding how each license will be held following the closing of the AT&T Acquisition.

¹⁰ *See In re Media Gen. Commc'ns, Inc. (Assignor) & MG Broad., LLC, as E.A.T. (Assignee)*, Memorandum Opinion and Order, 21 FCC Rcd. 7669, 7670 ¶¶ 4-5 (2006) (determining that the transfer of *de jure* control of assets between the *de facto* controlling party and the exchange accommodation titleholder was a *pro forma* transaction).

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Confidentiality Request

AT&T hereby requests confidential treatment for the Documents and the information contained therein pursuant to Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459, because that information is exempt from disclosure under FOIA Exemption 4.

Commercial, financial, and trade secrets are exempt from disclosure under FOIA. 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d). The Documents explain the relationship among various parties to effect a reverse like-kind exchange under the Internal Revenue Code. They, therefore, are commercial information.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.¹¹ For materials not subject to *Critical Mass*, *National Parks* establishes a two-part test for determining if information qualifies for withholding under Exemption 4.¹² The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempt from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The Documents are the sort of commercial agreements that AT&T customarily does not release to the public and maintains on a confidential basis. Compelled public disclosure of the Documents plainly would impair the Commission's ability to obtain similar information in the future. It would chill industry incentives to provide as much detail to the Commission, whether in future transactions or in investigations and enforcement proceedings. It would thus hamper the general ability of the Commission to conduct such proceedings and to rely on the cooperation of relevant parties to obtain documents and information necessary for reasoned decision-making

¹¹ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("*Critical Mass*").

¹² *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("*National Parks*").

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and for ensuring compliance with the statutes and rules enforced by the Commission. It would, in short, undermine the agency's "effective execution of its statutory responsibilities." *9 to 5 Org. for Women Office Workers v. Bd. of Governors*, 721 F.2d 1, 11 (1st Cir. 1983); *see also Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 30 (D.D.C. 2000) ("The government has a compelling interest in ensuring that the information it receives is of the highest quality and reliability, and disclosure of potentially sensitive commercial and financial information, even where submissions of information are mandatory, would jeopardize the Bank's ability to rely on any such information. . . , thereby hindering the Bank's fulfillment of its statutory purpose."); *Africa Fund v. Mosbacher*, No. 92 CIV 289, 1993 WL 183736 at *7 (S.D.N.Y. May 26, 1993) ("Disclosure would . . . impinge upon the agency's receipt of substantial information that potential exporters voluntarily submit when seeking export licenses and that the agency finds invaluable in making policy and maintaining effective export controls.").

For these reasons, the company that arranged the reverse like-kind exchange and AT&T are entitled to – and the public interest requires – confidential treatment for the Documents and the information contained therein. Distribution of the Documents or such information within the Commission should be limited to a "need-to-know" basis. In the event that any person or entity requests access to the Documents or seeks to make some or all of it part of the public record, AT&T requests to be notified immediately so that it can oppose such request or take other action as necessary to safeguard its interests and those of other potentially affected parties.

Sincerely,

A handwritten signature in cursive script that reads "Peter J. Schildkraut". To the right of the signature is a small, handwritten circled "PH".

Peter J. Schildkraut
Counsel for AT&T Inc.

Enclosures (REDACTED)